DOCUMENT RESUME

ED 260 145 UD 024 326

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TITLE	Testimony on the Immigration Reform and Control Act of 1985 (S. 1200) before the Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, United States Senate.
INSTITUTION	National Council of La Raza, Washington, D.C.
PUB DATE	17 Jun 85
NOTE	48p.
PUB TYPE	Viewpoints (120) -- Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Equal Opportunities (Jobs); Federal Legislation; *Hispanic Americans; *Immigrants; *Labor Legislation; Law Enforcement; Minority Groups; Public Policy; *Social Discrimination; *Undocumented Immigrants
IDENTIFIERS	Guest Workers; *Immigration Law

ABSTRACT

The National Council of La Raza's opposition to the Immigration Reform and Control Act of 1985 (S. 1200) is explained in this paper, which was presented as testimony before the Senate Subcommittee on Immigration and Refugee Policy. Three provisions of the proposed bill are analyzed: employer sanctions, legalization, and guestworkers. First, the paper asserts that employer sanctions would lead to increased employment discrimination against Hispanics, and that, furthermore, S. 1200's omission of a uniform verification process and strong, effective anti-discrimination provisions would undermine the bill's effectiveness and political viability. The targeted enforcement of existing labor laws is proposed as a better deterrent to the hiring and exploitation of the undocumented. Secondly, it is predicted that, even if S. 1200's proposed "triggered" legalization program were implemented, it would not substantially reduce the undocumented population. It is proposed that the legalization program be restructured along the lines of the Roybal bill (H.R. 4909). Third, La Raza's opposition to the expansion of guestworker programs is clarified. The importation of large numbers of foreign workers, it is argued, is inimical to the legislation's supposed purpose of protecting domestic jobs and may actually encourage illegal immigration. Other problems with S. 1200 are outlined, and implications of data regarding the general public's ambivalence to immigration issues are discussed. Four attachments, all originating with La Raza, provide research findings that support the paper's major points. (KH)

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TESTIMONY ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1985 (S. 1200)

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Before:

Subcommittee on Immigration and Refugee Policy
Committee on the Judiciary
United States Senate

June 17, 1985

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STATEMENT OF
RAUL YZAGUIRRE, PRESIDENT
NATIONAL COUNCIL OF LA RAZA

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, my name is Raul Yzaguirre, and I am President of the National Council of La Raza. The Council is a Washington, D.C.-based national organization dedicated to improving life opportunities for Hispanics in the United States. The Council's constituency is composed of some 75 affiliated Hispanic community-based organizations located in 19 states and the District of Columbia, who together serve approximately one million Hispanics.

Mr. Chairman, I wish to express my appreciation to you for giving us the opportunity to present our views on an issue of critical importance to the Hispanic community and to the future of this great nation. Although we are not always able to agree, we have come to know each other well through our continuing dialogue; we have the highest respect for your leadership on this terribly difficult and complex issue. The fact that our disagreements with you have forced us, ultimately, to oppose portions of your previous legislative initiatives with all of our energy and influence does not diminish our admiration for your intelligence, integrity, and sense of fair play.

We also wish to recognize the outstanding work of Subcommittee General Counsel Dick Day and his staff. Despite our oppposition to certain elements of the legislation you have sponsored in the past, your staff has consistently acted with the utmost courtesy, professionalism, and fairness in its dealings with the National Council of La Raza.

We especially appreciate the fact that you have dis-associated yourself from xenophobic extremists who seek to exploit the immigration issue to promote fear, bigotry, and racism. As you have pointed out before, rational discussion of this issue is difficult enough without having the debate poisoned by racial overtones.

Therefore, we were pleased when the Senate, in its wisdom, saw fit to elect you to the position of Assistant Majority Leader. We are confident that you will carry out your leadership responsibilities with the intelligence and wit that have become your trademark.

I come before this Subcommittee today to explain why we believe that S. 1200 is a clear step backward even from the previous efforts which we were obligated to oppose. The National Council of La Raza opposes S. 1200, and believes that it will be less effective and more discriminatory than previous versions of the bill. Our reasons for this belief are described below.

II. ANALYSIS

A. Employer Sanctions

Our concerns with employer sanctions are well known to the Chairman and this Subcommittee. As with any proposed policy system, sanctions must be measured against three tests. First, the proposed policy must be necessary, for any change in existing policy must be justified on the basis of need. Second, the proposed policy must be effective; it should solve the problem which justifies its adoption. Finally, a new policy must not create additional problems that may outweigh the benefits it provides. We believe that employer sanctions fail all three tests.

That there is an immigration "problem" is indisputable; the question is whether the scope of the problem justifies the proposed policy. The most common rationale for employer sanctions is that undocumented workers displace large numbers of citizens and other authorized workers from jobs. The issue of job

displacement is a controversial one among economists, and there is little consensus among scholars regarding the scope and degree of such displacement. We have recently completed an analysis of the latest research on this issue, a copy of which is listed as Attachment A to this testimony. We discovered that there is considerable merit to both sides of the displacement debate. Some natives are inevitably displaced, and lower-tier, disadvantaged workers -- including Hispanics and other minorities -- appear to bear the brunt of this displacement. However, the empirical data show that, on balance, undocumented workers have a neutral, and in some cases positive, effect on the economy.

I will address the question of effectiveness more fully below. It is sufficient to note here that employer sanctions have been tried in other countries, in 12 states, and even at the federal level through the Farm Labor Contractor Registration Act, yet there is simply no empirical evidence that such sanctions have been effective in reducing undocumented populations anywhere in the world. The fact that agricultural employers acknowledge that they currently rely on massive numbers of undocumented workers -- despite the employer sanctions provisions of the Farm Labor Contractor Registration Act -- is clear evidence that employer sanctions do not substantially reduce the employment of unauthorized workers.

Our greatest objection to employer sanctions, as you know, is that they will increase employment discrimination against Hispanics and others who fit immigrant stereotypes. There is considerable theoretical disagreement over this issue, but somehow a key fact has been omitted from the debate on discrimination. The fact is that discrimination resulting from sanctions has already occurred. After California passed its sanctions law, one of the top administrators of the program testified before the U.S. Commission on Civil Rights that some employers responded by screening employees on the basis of ethnicity and speech accent.

During the House debate on the Simpson-Mazzoli bill last year, the Los Angeles Times reported that a number of employers had already begun to screen out Hispanic employees; thus, even the threat of sanctions has led to employment discrimination. We do not believe that all employers will react in this manner, but we are convinced, based on irrefutable, "real world" evidence, that some discrimination will result. A brief summary of our position on the discrimination issue is listed as Attachment B to this testimony.

Proponents of employer sanctions have responded to our concerns about discrimination by pointing to the uniform verification process as insurance that employers will not be given any incentive to discriminate. While we do not agree that uniform verification is sufficient protection against discrimination, we have accepted the inclusion of the verification process -- including penalties for failure to apply the process to all new hires -- in past legislation as tangible evidence of your commitment to minimize discrimination. We are therefore concerned that S. 1200 contains a voluntary verification process, with no penalty for discriminatory application of that process. Some members of the business community argue that the verification process will impose severe recordkeeping burdens on business, but the history of our civil rights laws shows that such records are essential to identify patterns of discrimination. We are disappointed that the recordkeeping argument has led to the removal of the uniform verification provisions from this bill, for we believe that recordkeeping is a small price to pay to further this nation's commitment to equal employment opportunity.

In addition, we are disappointed that this bill does not include an effective system of redress for victims of discrimination resulting from sanctions. The proposed requirement that the existence of such discrimination must first be certified by the General Accounting Office (GAO) and the U.S. Commission on Civil Rights (USCCR) before the redress system is implemented is faulty on three grounds.

First, discrimination is terribly difficult to detect. Most victims of discrimination do not even know that they have been discriminated against. Second, in the absence of recordkeeping, it is not clear how the GAO and the Commission on Civil Rights are to document the existence of discrimination. Third, the initial victims of discrimination would have no means of seeking remedies, since the redress system would not be triggered until after a finding that such discrimination had occurred.

In addition, we believe that the redress system proposed in S. 1200 is sorely inadequate, even if it were implemented. Seasonal and temporary workers would not be afforded protections, and legal permanent residents could not seek relief for acts of discrimination on the basis of alienage.

To the extent that any political consensus exists in support of employer sanctions, that consensus includes a uniform verification system, and strong, effective anti-discrimination provisions. S. 1200, unfortunately, omits these two key elements. Mr. Chairman, we recognize that any politically viable bill must include a credible enforcement provision. To that end, we supported the Roybal bill (H.R. 4909) in the House last year, which proposed the targeted enforcement of existing labor laws as a deterrent to the hiring and exploitation of the undocumented. Many argue that labor law enforcement is not perfect, that it will not eliminate the hiring of all undocumented workers. But neither will employer sanctions. We believe that labor law enforcement will be more cost-effective than employer sanctions in reducing the hiring and exploitation of undocumented workers, without the risk of increased employment discrimination. Attachment C to this testimony examines the issue of labor law enforcement in more depth, and we would urge the Subcommittee to consider such enforcement as a positive alternative to employer sanctions.

B. Legalization

The legalization program in S. 1200, we believe, is ill-conceived and inadequate. It is ill-conceived because it is structured in such a way that virtually ensures that legalization will never be implemented; it is inadequate because, even if implemented, it would not substantially reduce the underclass of undocumented workers.

Mr. Chairman, I would first like to review the rationale for legalization. First and foremost, legalization is a practical solution to a major problem. A legalization program would:

- Reduce the highly exploitable subclass of undocumented persons, the existence of which is harmful to both the undocumented and the society at-large;
- Enable the Immigration and Naturalization Service to better target enforcement resources;
- Permit employers dependent upon this pool of labor to continue to use it on a lawful basis; and
- Provide comprehensive information about the undocumented population which is essential for improved enforcement in dealing with future flows, as well as for demographic and population planning.

There are humanitarian and ethical considerations involved as well. Massive deportation or repatriation campaigns are not only impractical, but likely to result in wholesale violations of civil rights. The vast majority of the permanent undocumented population have established equities in this country; they work hard, they pay taxes, and are otherwise law-abiding, contributing members of the society. The main point is that legalization is the right thing to do, not just for the undocumented, but for the society as a whole.

We know you share our commitment to the concept of legalization, but we believe that the program contained in S. 1200 may never be implemented. S. 1200 would require certification by a Presidential Commission of three conditions as

pre-requisites for the implementation of legalization. The Commission would have to certify that enforcement programs are "substantially":

- Controlling illegal entry;
- Preventing and deterring visa abuse; and
- Eliminating the employment of unauthorized aliens.

If, as we believe, employer sanctions will not be effective in deterring the employment of undocumented persons or in reducing illegal entry or visa abuse, then legalization could not be implemented. Attachment D to this testimony describes the reasons for our belief that sanctions won't work. In short, our analysis suggests that the majority of the employers of undocumented persons will either accept sanctions as a business cost, or will easily be able to evade or circumvent sanctions. This analysis is confirmed by the experience of sanctions in other countries, the experience of the Farm Labor Contractor Registration Act, and by on-going research on the labor market impact of undocumented workers.

Moreover, even if sanctions were effective, it is unclear how the Commission would be able to certify their effectiveness given the extreme unreliability of existing INS and other data on illegal entry, visa abuse, or employment of unauthorized aliens. Furthermore, in the unlikely event that the Commission was able to reach a consensus on a set of reliable data to assess the effectiveness of enforcement efforts, serious questions remain about the ability of the Commission to satisfy the pre-conditions for legalization.

For example, the operative term in the three pre-conditions for legalization is "substantially," i.e., illegal entries, visa abuse, and unauthorized employment must be "substantially" reduced. It is not clear whether "substantially" would mean reductions in absolute numbers of entries, visa abusers, or unauthorized employment, or merely relative reductions in these categories. If an absolute reduction were required, the unauthorized employment criterion would probably never

be met given the transition program for agricultural employers, and the fact that only new hires would be covered by employer sanctions.

Even measurements of relative reductions in illegal entries, visa abuse, and unauthorized employment would be problemmatical for the Commission, because factors other than the effectiveness of domestic immigration enforcement can affect rates of illegal migration and employment. Changes in the world economy or in the domestic economies or political conditions of the major sending countries can affect migration rates. It is known that economic conditions in the United States affect rates of migration to this country, and certainly affect employment. If we were to have a recession here, one would expect that the employment of undocumented persons would be reduced. It is not clear how the Commission could determine the extent to which any reduction in the employment of unauthorized persons would be attributable to effective enforcement, domestic economic conditions, or other factors.

In addition, enforcement strategies and deployment of INS personnel change periodically. Even if a "baseline" measurement could be agreed upon, data for subsequent years could be skewed by policies and events as innocuous as the discovery of "bugs" in automated visa control systems, or as momentous as another "immigration emergency" such as the Mariel boatlift. In 1980, for example, a shift in deployment of INS personnel to South Florida from the U.S.-Mexico border was accompanied by a decrease in apprehensions. It is probably safe to say that the two events were related, but it is not possible to quantify the effect of the deployment.

In sum, the inherent unreliability and imprecision of the data base available to the Commission would make the certification process terribly difficult at best, and arbitrary at worst.

There are other problems with the "triggered" legalization concept. The undocumented population eligible for legalization would be in serious jeopardy during the period before the implementation of legalization. This jeopardy issue establishes a "catch-22" situation; if employer sanctions are effective, then presumably there will be few persons to be legalized; if sanctions are not effective, legalization will not be implemented.

For these reasons, the National Council of La Raza opposes the concept of a "triggered" legalization program. In addition, our concerns about the "trigger" notwithstanding, we believe that the legalization program in S. 1200 is inadequate because it would not substantially reduce the undocumented population. The 1980 "cut-off" date and the unnecessarily strict eligibility requirements together would reduce the eligible population, and the absence of other safeguards would deter a substantial proportion of the eligible population from coming forward to participate in the program.

It has been argued that the legalization concept is not politically viable, and that therefore changes such as a "triggered" program are necessary to ensure passage of an immigration reform bill. The facts simply do not support this conclusion. Two years ago in the Senate, the vote to retain legalization (76-21 against the Helms amendment to strike legalization) was virtually the same as the vote in favor of final passage of the bill (76-18). In the House last year, the vote to retain legalization (233-195 against the McCollum amendment to strike legalization) was much greater than the vote margin in favor of final passage of the bill (216-211).

Some have argued that the "triggered" legalization program was endorsed by the Select Commission on Immigration and Refugee Policy. We have reviewed the report of the Select Commission, and have found no references to a "trigger" of any kind. The Select Commission endorsed a provision to ensure that legalization did

not begin until enforcement measures were in place, but did not make the implementation of legalization contingent on any certification of the degree of effectiveness of such enforcement measures.

Therefore, Mr. Chairman, we recommend that the "trigger" requirement be removed from the legislation. We further recommend that the legalization program itself be re-structured along the lines of last year's Roybal bill (H.R. 4909), to ensure that this one-time opportunity to reduce the undocumented subclass be as effective as possible.

C. Guestworkers

As you know, the National Council of La Raza opposes any massive expansion in "guestworker" programs, on several grounds. First, such an expansion is inimical to the purpose of the legislation. If one major purpose of the bill is to protect domestic jobs, it is difficult for us to understand how this is to be accomplished by importing 500,000 foreign workers. Second, previous experience with guestworker programs, both here and abroad, show that such programs tend to encourage, rather than discourage, illegal immigration. Third, such programs encourage the exploitation and abuse of both the guestworkers and native workers, as demonstrated by the infamous "bracero" program. The "bracero" program experience shows that abuse and exploitation are likely even when legal protections for the guestworkers and native workers are provided. We have no basis to believe that the proposed changes in the H-2 temporary worker program embodied in S. 1200 will be more successful than previous guestworker programs in protecting the rights of both guestworkers and native workers.

The Select Commission rejected expansion of guestworker programs by a 14-2 vote. We are disappointed that the guestworker provisions in S. 1200 protect the naked, economic self-interest of a chosen few, while undermining the purposes of this bill. Mr. Chairman, we recommend that the proposed changes in the H-2 program

be deleted from the bill entirely. To the extent that the agricultural transition program proves insufficient to meet the legitimate needs of agricultural employers, we would recommend that the scope and degree of any changes in the H-2 program be thoroughly studied prior to the implementation of such changes.

III. OTHER ISSUES

We believe that there are some improvements in S. 1200 over previous reform efforts. We applaud the removal of provisions that would have reduced legal immigration, and that would have unnecessarily restricted the rights of persons seeking asylum in this country. But on balance, we believe that S. 1200 is a major step backward from legislation previously reported out by this Subcommittee.

There is one last issue I must address. It has become fashionable recently to cite public opinion polls of Hispanics to suggest that the Hispanic leadership is out of step with its community on the issue of immigration reform. It is argued that some polls have demonstrated support in the Hispanic community for employer sanctions. Since every member of the Congressional Hispanic Caucus and virtually all the leaders of national Hispanic organizations oppose employer sanctions, the argument goes, these leaders are unrepresentative of their constituents.

Mr. Chairman, as a well-informed scholar of the history of immigration, you are surely aware of this country's traditional ambivalence towards newcomers. On the one hand, we cherish our immigrant heritage; on the other hand, we tend to fear newcomers. I believe that the polling data most commonly cited reflect only the latter sentiment. A recent poll by the U.S. Committee for Refugees found that, when asked in the abstract whether the number of foreigners allowed into the country should be curtailed, most of the public responded in the affirmative. But when asked specifically about admitting ten different types of immigrants and refugees into the U.S., the majority of the public chose to admit each one. The poll further found that the more accurate a person's knowledge about immigration

and refugee issues, the more willing the person is to support generous immigration and refugee policies. These findings confirm the traditional American ambivalence toward immigration, and demonstrate that it should not be assumed that superficial polling data accurately reflect public attitudes.

With an issue so ripe for demagoguery and nativism, it is incumbent on our political leaders to appeal to the highest sentiments of the public, for our history shows that the public interest is poorly served when policy makers respond blindly to xenophobic sentiments. The Chinese Exclusion Acts, two "repatriation" campaigns against Hispanics, and the internment of Japanese Americans at the outset of World War II -- incidents that are among the most shameful in our history -- were the results of fear and intolerance. Immigration policy should be established based on the best available information by those fully aware of its implications for our country, not by superficial polling data.

A 1980 Gallup poll reported that two-thirds of the public opposed <u>any</u> immigration unless unemployment fell below four percent. Yet, not even extremist groups advocate the elimination of all immigration, despite widespread agreement that unemployment is unlikely to approach the four percent level in the near future. We do not believe that public officials who support modest levels of legal immigration are out of step with their constituents. A recent Roper poll found that more than 80% of the public supported major reductions in legal immigration. Yet, proposals to restrict legal immigration at about current levels were soundly defeated in the House last year. We do not believe that the 231 House members who voted against this proposal are themselves "out-of-touch" with their constituents.

Mr. Chairman, Hispanic Americans share the larger public's ambivalence toward immigration. If we expect our legislators to appeal to the best, rather than the worst instincts of the public in formulating public policy on this issue, surely we should expect no less from the leadership of the Hispanic community.

IV. CONCLUSION

In conclusion Mr. Chairman, I remain convinced that, despite our substantial differences, it is imperative that we continue to try and build a consensus for positive immigration reform. No community suffers more than ours under the status quo; no community stands to benefit more from a legalization program. Our beliefs obligate us to oppose S. 1200, but I pledge to work with you in good faith to narrow our differences and to address the concerns raised in this testimony, so that one day we can work together to pass the fair and effective immigration reform legislation that is so sorely needed.

ATTACHMENTS

Attachment A - "Undocumented Immigrants in the Labor Market: Recent Research Findings," Issue Brief, National Council of La Raza, February 1985.

Attachment B - Memorandum by Charles Kamasaki and Dan Purtell on Employer Sanctions and Job Discrimination, National Council of La Raza, June 1985.

Attachment C - "Effectiveness of Labor Law Enforcement in Deterring Illegal Immigration," Issue Brief, National Council of La Raza, March 1984.

Attachment D - Memorandum by Charles Kamasaki on Triggered Legalization, National Council of La Raza, June 1985.

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ATTACHMENT A

NATIONAL COUNCIL OF
LA RAZA
OFFICE OF RESEARCH
ADVOCACY AND LEGISLATION

Perspectivas
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ISSUE BRIEF

Title: UNDOCUMENTED IMMIGRANTS IN THE LABOR MARKET: RECENT RESEARCH FINDINGS (Feb. 1985)

Contact: Charles Kamasaki or Dan Purtell at (202) 628-9600

I. BACKGROUND

Early researchers utilized theoretical models and general, published labor market data to estimate the labor market effects of the undocumented. Most of these researchers fit one of two categories. The first category includes those who believe that widespread displacement of native workers results from the employment of undocumented aliens. Vernon Briggs, an economist from the University of Texas, for example, suggested that increasing the supply of any commodity -- in this case labor -- would cut the price of that commodity (wages). Eventually, wage depression and increasingly poor working conditions were said to "drive out" native workers, resulting in "indirect displacement" of such workers. In addition, Briggs argued, some undocumented aliens directly displace natives from "good" jobs. Former Secretary of Labor F. Ray Marshall, immigration expert David North, and Department of Labor economist Marion Houstoun came to similar conclusions.

Another set of economists, including Michael Piore and Wayne Cornelius from the Massachusetts Institute of Technology, came to far different conclusions. This category of researchers posited the existence of a dual or segmented labor market, with the vast majority of "good" jobs being supplemented by "bad," primarily menial, low-wage jobs. They argued that few native workers would take the "bad" jobs, and that undocumented aliens therefore filled a void in the labor market.

Cornelius has since characterized both types of research as "essentially conjectural analyses based on little or no real data."[1]

A second generation of research emerged in the late 1970s. North and Houstoun, Cornelius, and others began to collect field data to integrate into their theoretical models. However, the data used by these researchers were drawn from inadequate, limited samples and were typically interpreted in ways which merely supported the authors' original theoretical positions. In addition, these studies were attempting to address very complex issues while asking very simple questions. For example, they attempted to establish whether -- and to what degree -- displacement of native workers occurred without attempting to explain why labor markets operated in certain ways.

Theoretical arguments grew more sophisticated. Julian Simon of the University of Illinois, Niles Hansen of the University of Texas, and others argued that immigrants -- both legal and illegal -- create jobs by consuming goods and services, and by starting new businesses. Marshall and others refined the displacement thesis by arguing that minority and disadvantaged native workers are most vulnerable to unfair competition from the undocumented, irrespective of the macro-economic impact of the undocumented. Marshall also argued that the segmentation thesis assumes that many Americans are too lazy to take low-wage jobs, a charge he rebutted vigorously. Finally, Marshall and Briggs increased their use of normative arguments. For example,

they argued that, to the extent that the presence of "illegal aliens" contributes to the retention of some highly competitive industries, the undocumented perpetuate "low-wage, low-productivity job systems that lower the average level of productivity in this country."2

In 1979, the Department of Labor, relying on the kind of supply-demand analysis used by Briggs, Marshall, et. al., estimated that one in five jobs held by undocumented aliens could be filled by a native worker. In other words, according to this study, the displacement rate of native workers by the undocumented is on the order of 20%.3

In 1981, the U.S. Chamber of Commerce released a study comparing unemployment rates of cities with large numbers of undocumented aliens to those of cities with small or no undocumented populations. The Chamber found that cities with large undocumented populations tended to have lower rates of unemployment than cities with small or nonexistent undocumented populations. The Chamber concluded that "there is no correlation between the unemployment rate and undocumented workers."4 The Chamber study was rebutted by David North, who noted key methodological shortcomings in the Chamber's approach. Most observers -- including this writer -- accept North's critique. However, even when the data are more rigorously analyzed, the Chamber's main conclusion -- that there does not appear to be a strong, positive correlation between the presence of undocumented workers and high rates of unemployment -- seems to be accurate.

II. RECENT RESEARCH FINDINGS

Only recently have social scientists and others begun to examine the "real world" labor market effects of the undocumented worker phenomenon. Project Jobs, a 1982 Immigration and Naturalization Service (INS) enforcement initiative, provided an opportunity to test the validity of conflicting claims about displacement. INS reported 5,440 apprehensions of undocumented workers with an average wage of $4.81 per hour. According to a survey by the Los Angeles Times, about 80% of the jobs "freed" were filled again by undocumented workers. The survey found that, while many native workers applied for the open positions, very few chose to stay in those positions for more than a few days.5

The wage depression issue was studied by University of Texas economists Barton Smith and Robert Newman, who compared wages paid along the U.S.-Mexico border with wages in non-border areas. They found that the differential between the two areas was about eight percent. They concluded that the negative effect of the undocumented worker on wages was "not as severe as many have contended."6 One possible problem with the Smith-Newman study is that some of the non-border areas studied included cities with large undocumented populations themselves, e.g., Houston.

Beginning in the early 1980s, Rice University economist Donald Huddle started to examine the construction industry in Houston in order to measure the impact of undocumented aliens on the blue-collar labor force. Huddle concluded that for every 10 undocumented workers, about seven native workers were displaced.7 Huddle projected his findings over the entire U.S. construction industry -- and even into other industries -- and suggested that the net costs of displacement, welfare use, tax evasion, and increased welfare benefits for displaced workers amounted to billions of dollars annually. UCLA economist Estevan Flores and University of Texas sociologist Gilberto Cardenas vigorously attacked Huddle's findings and conclusions, noting, for

example, that Huddle used the color of construction workers' helmets to differentiate between undocumented and native workers. Flores also noted that Huddle's findings had not been subjected to anonymous peer review from a social science journal, and that the study had not been published in a professional journal.8 Nevertheless, Huddle's research has been widely publicized within Texas and in the national press, and has been cited during floor debate on the Simpson-Mazzoli bill in both the Senate and the House.

In 1984, Thomas Muller of the Urban Institute published a summary of a study entitled The Fourth Wave. Muller rigorously analyzed special tabulations of Census and Current Population Survey data for Los Angeles and Southern California, and found that:

- There was no evidence that work opportunities for nonimmigrants lessened as a result of high rates of immigration. Unemployment rates rose less rapidly in Southern California than in the remainder of the nation from 1970 to 1980.

- Those industries with the highest percentages of Mexican labor had the slowest rates of wage increases. Immigrant domination of the occupations with increases below the national average suggests that immigrants themselves absorbed most of the effects of depressed wages.

- Lower wages in these industries enhanced their competitiveness, during an influx of lower-cost foreign goods. As a result, manufacturing sectors which experienced decreased employment nationwide actually expanded in Los Angeles, adding positions for skilled and white-collar workers to complement the immigrant-dominated, unskilled production jobs.

- Despite wage depression in some sectors, wages of all employees, already above the national average, rose nine percent more rapidly in Los Angeles than in the nation in the 1970-80 period.

- Despite the arrival of 325,000 Hispanics, whose average income was only half the average income for the area, per capita income from all private sources rose more rapidly in Los Angeles than in the nation as a whole. During the same time, per capita growth in transfer payments, (e.g., public assistance) was considerably lower than in most other metropolitan areas.9

Julian Simon and Stephen Moore of the University of Maryland are nearing completion of a study on the effects of immigration on unemployment. Simon and Moore are examining changes in unemployment levels in cities as a function of varying rates of immigration to those cities. Using changes in unemployment levels avoids many of the methodological pitfalls that North identified in the Chamber study. Simon and Moore have found that:

> ...there is no observed increase in unemployment due to immigration, even (or especially) in the relatively short run during which adjustment frictions should cause the most severe unemployment problem.10

This study focuses on legal immigration, not undocumented immigration. Previous studies of this issue, however, have demonstrated that undocumented workers tend to be concentrated in localities with substantial numbers of legal immigrants of similar ethnicity. Nevertheless, the findings are not automatically applicable to the effects of the undocumented in the labor market.

University of Colorado economist Michael Greenwood utilized time-series data from the Social Security Administration to estimate the employment effects of immigration for selected cities. He found that:

> ...for New York, Los Angeles, Chicago, Miami, and San Fransisco, one more employed migrant results in one more job.... However, for Houston, El Paso, Philadelphia, and San Diego, one additional employed migrant resulted in more than one additional job.[11]

Greenwood further examined the Social Security data to determine the effects of immigration on wage levels. He found that, in the 11 cities studied:

> ...in each city, except El Paso and Philadelphia, migration had a statistically significant effect on local earnings levels. In Chicago the effect was negative, but in the remaining cities it was positive.[12]

Other researchers are beginning to address the more complicated question of how immigrant-dominated labor markets function. University of Texas professors Gilberto Cardenas, Rodolfo de la Garza, and Niles Hansen have discovered that many Mexican immigrants in Austin, Texas, tend to be employed by firms owned by other Mexican immigrants, or by second-generation Mexican Americans. According to these researchers, the presence of Mexican immigrants "has contributed significantly to the development, maintenance, and recent expansion of the Chicano business sector" in Austin by providing reliable, low-cost labor and by expanding the market for goods and services from the Chicano businesses.[13]

Sociologist Gary Lemons of the University of New Mexico has found the roofing industry in Albuquerque, New Mexico, to be increasingly immigrant-dominated. The vast majority of first-time, native roofing laborers leave their jobs within two weeks, even at entry-level wages of $3.75-$4.50 per hour. Employers have responded by seeking a more stable, low-turnover workforce of undocumented workers.[14]

Wayne Cornelius, who now heads the University of California at San Diego's Center on U.S.-Mexico Studies, and a number of associates have initiated a series of long-term studies designed to ascertain the way in which immigrant-dominated labor markets function. Cornelius is seeking to move beyond simple questions of the existence/level of displacement and wage depression to more sophisticated and complex questions of why immigrant-dominated labor markets function in certain ways. While their research is not yet complete, Cornelius, et. al., have found that:

> ...there is not one but many different paths to reliance upon immigrant labor. One category of firms and industries consists of those that have always been immigrant-dominated.... They have never employed significant numbers of non-Mexican workers, at least in lower-level production jobs. Examples would be seasonal agriculture, the poultry industry, and shoe and leather manufacturing.

> Another category of immigrant-dominated firms are those in which the employers have had what they regard as negative experiences with alternative (non-immigrant) labor sources, like Anglo teenagers, blacks, or Indochinese refugees. These firms turned to Mexican immigrants in order to boost productivity, improve labor discipline, reduce absenteeism, or to stabilize their work force, since Mexican immigrants are likely to stay longer in the jobs for which they have initially been hired.... Restaurant owners, in particular, seem to have experimented with non-Mexican workers for menial jobs...but found them wanting, or could not retain them in these jobs.
>
> In another category of firms and industries, there was at one time a sizable presence of legal resident workers, but the influx of undocumented immigrants since the mid-1960s has caused them to be Mexicanized. The entry of large numbers of undocumented workers into these industries seems to have caused a gradual decay of labor standards and wage levels, provoking an exodus of legal immigrant workers.
>
> Another, much larger stratum of firms has gone to heavier reliance on undocumented immigrant labor because of intense competitive pressures.... These are the firms that have been "driven to the wall" by competition.... Examples in California would be small foundries and shoe and leather manufacturing firms.15

Cornelius has identified other key aspects of immigrant dominated labor markets. One is the "de-skilling" phenomenon. Cornelius explains:

> In still another class of firms and industries, technological innovations have made it possible to disperse and deskill large numbers of production jobs.... If the firm can divide up its production process sufficiently, it can move quickly to the end of the [product] cycle, dispensing with the middle stage of skilled labor. This has happened increasingly in electronics, but even in far less technologically sophisticated industries like poultry, [and] even some of the service sectors and the construction industry.16

This phenomenon results in the increasing use of subcontracts between well-established, often highly unionized firms and small, often immigrant-dominated firms. According to Cornelius, many of these smaller firms are:

> ...part of the underground economy, paying few or no taxes and avoiding other contacts with government agencies. They are extremely abusive and hyperexploitative of their workers, offering no job security and no opportunities for upward mobility.17

III. EFFECTS ON NATIVE BLACK WORKERS

One variant of the displacement thesis is the idea that undocumented workers have a disproportionate, negative effect on Black and other disadvantaged native workers. Ray Marshall, for example, has noted that:

> ...the costs [of illegal immigration] include increased inequality of income between advantaged and disadvantaged persons in this country -- inequality resulting from the increased job competition and depressed wages and working conditions for the almost 30 million low-skilled U.S. workers who compete directly with illegal immigrants.18

Some predominantly Black organizations, including the National Association for the Advancement of Colored People (NAACP), also contend that undocumented workers displace Black workers to a significant degree.

George Borjas, an economist with the University of California at Santa Barbara, has concluded that Hispanic immigrant labor and non-Hispanic labor are generally not "interchangeable," i.e., these two groups do not generally compete for the same types of jobs. Based on analyses of the 1970 Census and the 1976 Survey of Income and Education, Borjas suggests that:

> The data clearly show that the entry of Hispanics in the local labor market did <u>not</u> lead to a decline in black earnings and employment, or in the earnings of any other non-Hispanic group. Rather, the emergence of Hispanics as a large group in the labor market may have led to a small <u>increase</u> in black earnings and employment. These results clearly show that the conventional wisdom of Hispanics "taking jobs away" from blacks is not supported by the data.19

Muller's research verifies Borjas' conclusion that increases in Hispanic immigrant workers do not appear to adversely affect Black employment or earnings. Muller notes that:

> Our examination of black unemployment rates and the concentration of Hispanics in more than 230 large metropolitan areas across the country shows no statistical relationship between the size of the Hispanic population and black unemployment.... An analysis of the black unemployment rate and the size of the Mexican immigrant population in Southwestern metropolitan areas indeed suggests a negative relationship.20

The one subgroup that would appear to be the most vulnerable to increased job competition from the relatively unskilled undocumented workforce is Black teenagers. However, Muller found that:

> Even the job prospects for black teenagers do not appear to be adversely affected by the influx of immigrants. Total teenage unemployment in Southern California is close to the national average, but unemployment among black teenagers is substantially lower than average.21

Muller also found that earnings of Black workers were not affected by increased immigration:

> Within California, income gains for blacks were greater in Los Angeles County than in the metropolitan areas with few Hispanic immigrants.... This pattern is not limited to California. Blacks in San Antonio, a city with a large Hispanic labor force, had the

highest income increases of any large metropolitan area. Blacks in Houston also progressed rapidly.22

IV. INTERPRETING THE RESEARCH

A. Overview

The apparent lack of consensus among researchers on the displacement issue is clearly reflected in the debate over immigration policy. Advocates for restrictive immigration policies have embraced the view that undocumented workers cause widespread displacement, both directly and indirectly, through the lowering of wages and labor standards. These advocates consistently cite Briggs, Marshall, et. al., to support their position.

Opponents have taken the opposite view. Initially, these opponents of restrictive immigration policies cited Piore and Cornelius to support their position that the undocumented take jobs that "Americans don't want." More recently, these advocates have relied on Muller's research to refute the displacement thesis.

Yet, advocates on both sides have been unable to articulate strong methodological challenges to their opponents' studies. Advocates and policy makers have either ignored research that is inconsistent with their views, or have advanced ad hominen attacks against their authors. For example, the Federation for American Immigration Reform (FAIR), while dismissing Cornelius as "an apologist for illegal immigration," has never advanced a cogent rebuttal to his findings.23 FAIR has also cited Muller's findings about wage depression in immigrant-dominated industries in its publications while omitting his conclusions about the positive net contributions of immigrants to the economy of California.24

Both sides have apparently failed to recognize the essential truths, notwithstanding the limitations, of their opponents' positions. The following analysis is an attempt to integrate elements of the Briggs-Marshall-North and the Piore-Cornelius-Simon schools of thought, consistent with the latest empirical data.

B. Analysis

The question of whether any displacement takes place is essentially moot. As Simon and Moore point out:

> Indeed, some displacement must occur [as a result of immigration]. Unless immigrants immediately become self-employed, for a time they necessarily increase competition in the labor force. Some natives must therefore find it temporarily harder than otherwise to find or keep a job.25

Nor, for that matter, is there much question about the initial effect of increased labor market competition on wages. All the empirical studies, consistent with Marshall's theoretical analysis, show that wages in immigrant-dominated sectors of the economy are lower than would be expected otherwise.

The reverse is also true; that is, no displacement can occur unless some native workers choose not to accept some jobs. Rutgers University economist Mark Killingsworth explains:

...so long as native labor will work no matter how high or low the wage is, no displacement of natives by immigrants can possibly occur.26

When the effects of undocumented immigration are analyzed in isolation, as per the Briggs-Marshall-North approach, one cannot avoid the conclusion that both displacement and wage depression take place. This approach, however, fails to take into account compensating factors accompanying influxes of undocumented workers that tend to offset at least to some degree the initial wage depression and displacement effects caused by the undocumented. These compensating factors include:

- Increased demand: As consumers, immigrants inevitably increase demand for all goods and services. Moreover, as Cardenas, et. al. found, they tend to contribute to the growth and expansion of certain "ethnic enterprises" which employ immigrants, and have substantial immigrant clienteles. The entire economy benefits, and job opportunities for natives in the general economy are enhanced. North has documented that many immigrants send substantial sums of money "back home." When these remittances are taken into account, it appears that immigrants are equivalent to about three-quarters of a native consumer.

- Increased Productivity: If defined as increased output per unit of labor costs, then the lower wages paid to the undocumented, by definition, increase productivity. Consider the following examples:

  - In traditionally immigrant-dominated industries, which might disappear altogether without the presence of undocumented workers, the influx of such workers helps to retain the complementary white-collar and managerial jobs in that industry. Virtually all the upper-tier jobs are held by natives.

  - Manufacturing firms that would otherwise relocate or go out of business due to high labor costs and foreign competition are retained, and possibly even grow. Job losses for both natives and immigrants are avoided.

- Lower Prices: Goods and services provided by immigrant-dominated firms have lower prices to reflect the reduced cost of labor. The cost of living is reduced and domestic goods remain competitive with foreign imports, with concomitant benefits for both natives and immigrants. Since immigrants themselves absorb most of the effects of lower wages, natives benefit disproportionately from lower prices.

Not all of these factors can be quantified individually, but Muller has shown that the benefits from increased productivity in an area such as Southern California can be significant:

...perhaps 52,000 low-wage jobs in highly competitive manufacturing industries would not exist if Mexicans were not present.... There

is little question that, when all factors are considered, Mexican immigrants are a definite plus to the local economy.[27]

But what about the "good" jobs? Muller found that white-collar jobs in Los Angeles during the 1970-80 period grew at a rate about one-third higher than the national average. Of the more than 220,000 new white-collar jobs created in Los Angeles during that decade, Muller concluded that about 62,000 were filled by immigrants. Thus, the expansion of low-wage manufacturing jobs -- at least partially attributable to immigration -- helped to provide white-collar employment opportunities for about 152,000 native workers.[28]

Cornelius' work on the deskilling and subcontracting phenomenon helps to explain the benefits that native blue-collar workers accrue from the presence of illegal immigrant workers:

> ...the competitiveness of many large, upper-tier businesses in which immigrants do not predominate in the workforce depends increasingly on their ability to subcontract work to smaller firms that <u>are</u> immigrant dominated.... As international pressures increase, well-paying unionized jobs in the mainstream firms are being protected by a buffer of non-union, immigrant dominated firms. In other words, "bad" jobs are protecting not an insignificant number of "good" jobs in the U.S. economy.[29]

Yet the influx of immigrant workers does appear to have some negative effects on unskilled, disadvantaged, predominantly minority workers. Borjas, Muller, and others have not been able to discern a relationship between immigration and Black unemployment rates. There is, however, no doubt that many unskilled Blacks, Hispanics, and other disadvantaged workers were, at one time, displaced from the low-wage manufacturing and service sectors. In addition, as Briggs, Marshall, et. al. theorized, Muller's data confirm that wages in the immigrant-dominated industries are lower than would be expected if no undocumented immigrants were present.

How, then, can these seemingly incompatible sets of facts be reconciled? Consider the following analysis:

- A significant, but unknown, number of low-wage service and manufacturing jobs have been retained in areas like Southern California due to the influx of undocumented workers. Native Blacks and Hispanics hold a lower percentage of these jobs than might otherwise be expected, due to direct job competition from immigrants. Wages and labor standards are lower than in non-immigrant-dominated industries. Overall, in comparison with areas with few immigrants, more manufacturing and service jobs exist, retaining about the same absolute number of job opportunities for native disadvantaged workers, despite the declining percentage of native workers holding these jobs.

- A significant number of complementary white-collar and skilled blue-collar jobs are retained and/or created in part due to the expanding number of highly productive lower-tier jobs. Native Black and Hispanic workers fill an increasing proportion of these "good" jobs, many of which would not exist without the presence of undocumented immigrants, offsetting some effects of displacement.

- Increased demand for consumer goods and services caused by the immigrant influx and by rising incomes stimulates job growth in retail, clerical, and non-immigrant-dominated service industries. Most of these positions require proficiency in English, and are therefore limited almost exclusively to native or legal workers, including increasing numbers of blacks and Hispanics who might otherwise be competing for unskilled manufacturing and service jobs.

In this scenario, some native Blacks and Hispanics are negatively affected by the immigrant influx, through the loss of job opportunities in unskilled blue-collar and service industries. Those native workers that remain in those industries are hurt also by lower wages and deteriorating wage standards. At the same time, however, other, upwardly-mobile native Blacks and Hispanics find greater opportunities for "good" jobs. Muller explains:

> The influx of unskilled workers [in California] enabled the number of professional and other skilled jobs to grow, providing opportunities for native-born English-speaking workers, including minorities, to improve their work status.... [W]e found substantial occupational progress among blacks, particularly among black women. The number of blacks in professional occupations doubled; the number in low wage occupations either remained stable or declined.[30]

During this period, the demand for goods and services overall creates additional employment opportunities for all native workers. Disadvantaged workers are benefitted especially by growth in retail, clerical, and some kinds of service jobs, e.g., fast food, government jobs. Thus, although certain groups of native workers are displaced directly, and others suffer from depressed wages and working conditions, other members of these groups benefit. This appears to be one plausible explanation for the apparent contradiction between the intuitively obvious and logical arguments advanced by Briggs, Marshall, North, et. al., and the as yet unchallenged empirical findings of Muller, Simon, Cornelius, et. al.

Moreover, elements of the Piore-Cornelius dual labor market theory are verified in much the same way. Little in the way of direct or indirect displacement seems to occur in the industries that have traditionally been immigrant-dominated. Moreover, no true displacement takes place in the ethnic enclave firms that owe their existence to the presence of large immigrant populations. Finally, for some manufacturing and industries that are becoming immigrant-dominated, displacement may have occurred at one time, but even the removal of the undocumented from the labor force would not increase jobs for natives, since most of these firms would relocate or go out of business in the absence of undocumented workers. These jobs, once in the upper (or at least middle) tier of the segmented labor market, have been transformed by illegal immigration into jobs that "Americans don't want."

V. CONCLUSION

This Issue Brief is an attempt to provide a straightforward analysis of the major research on this issue. For too long, both sides of the debate over employer sanctions have found refuge in theories that support their pre-determined positions, irrespective of the empirical data.

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The recent research findings show that, while immigrant inflows do result in wage depression, erosion of working conditions, and job displacement in some industries, the net, macroeconomic effects of recent immigrant flows appear to be neutral, or even positive.

Another significant research finding involves the the differential effects that immigrant workers have on various industries. Given that there are different paths to reliance on immigrant workers which vary according to industry, and perhaps geography as well, this finding should not be surprising. Yet many advocates persist in characterizing the effects of immigrant labor in very general terms, or attempt to attribute the specific effects of immigrant workers on a single industry to the entire labor market. The next generation of research should more clearly identify the effects of immigrant workers on wages and job opportunities for natives in specific industries and locations.

This analysis of recent research demonstrates that there is considerable merit in both sides of the debate over the displacement issue. This recent research presents an opportunity to direct the policy and legislative debate on the immigration issue away from ideology and toward a greater, more critical understanding of the empirical data.

For more information, or copies of the cited material, please contact Charles Kamasaki or Dan Purtell at (202) 628-9600.

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ATTACHMENT B

NATIONAL COUNCIL OF
LA RAZA
Raúl Yzaguirre, President

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MEMORANDUM

TO : Interested Parties
FROM : Charles Kamasaki and Dan Portillo
SUBJ : Employer Sanctions and Job Discrimination
DATE : June 17, 1985

I. INTRODUCTION

Several immigration reform proposals now before Congress include employer sanctions -- a system for penalizing employers who knowingly hire, recruit or refer for a fee undocumented aliens. In the House, Representatives Lungren (R-CA) and Smith (R-NH) have introduced H.R. 1061 and H.R. 2267, respectively; in the Senate, S. 1200 was introduced in late May by long-time immigration reform sponsor Senator Alan Simpson (R-WY). These proposals have raised concerns among Hispanic groups, who oppose sanctions because they are inherently discriminatory (see, National Council of La Raza Issue Brief, "Employer Sanctions and Employment Discrimination," August 1983). Arguments around the discrimination issue have, in the past, centered on theoretical considerations, involving the ways in which employers were likely to react to the provisions, rather than on empirical, "real world" evidence of actual employer responses.

A growing body of evidence suggests that the relationship between employer sanctions and increased employment discrimination is real. This memorandum briefly analyzes and presents empirical evidence of sanctions-related employment discrimination.

II. THEORETICAL CONSIDERATIONS

A. Employer Responses to Sanctions

Experience in labor markets and employment practices suggests that efforts to monitor and control the hiring process will bring about different types of reactions from different types of employers. It is reasonable to assume that many employers would comply with employer sanctions in completely nondiscriminatory ways. Others, however, are likely to act in ways that would have the effect of job discrimination. For example, those employers who would be inclined to discriminate anyway would be provided a legal pretext for such discrimination. If legislation passes, these employers will be given an affirmative defense against discrimination charges, since they could contend that they had not been satisfied that the applicant was legally eligible to work.

A second group of employers may discriminate through good faith efforts to comply with sanctions statutes. Employer sanctions would create within applicant pools a subgroup of persons who, on the basis of physical characteristics, language, or other factors, appear to be "foreign" to employers. Employers seeking to avoid sanctions, as well as those who want to avoid burdensome paperwork, may choose not to hire Hispanics or other "foreign-looking" applicants.

Given the complex, subjective nature of the hiring process, it is unclear how all employers will react to sanctions. However, because of the way the threat of substantial penalties is likely to affect the process -- because it will be much easier to avoid hiring "risky" individuals -- discrimination related to the employer responses outlined above would very likely occur in a considerable number of cases.

B. Uniform Verification Standards

Almost all of the major proponents of employer sanctions have consistently maintained that, in order to avoid discrimination, employers must be required to inspect and record the documents of all hired individuals. This process -- the inspection of work authorization documents for all new hires -- is known as uniform verification. Proponents argue that uniform verificattion will eliminate the possibility of employers verifying the eligibility only of "foreign-looking" applicants, and thus prevent differential treatment of certain applicants during the hiring process. Father Ted Hesburgh, Chairman of the Select Commission on Immigration and Refugee Policy, has been one of uniform verification's strongest advocates:

> ...having concluded that an employer sanctions law is necessary, the essential question is how to make such a law work without having it discriminate against minority groups, disrupting the workplace or placing too great a burden on employers and eligible employees. The answer lies in some reliable method of employee identification which all of us who are eligible would have to produce when we applied for a job. (Select Commission Final Report, 3/1/81; emphasis added)

While Father Hesburgh and many others have proposed uniform verification as a preventative measure against potential discrimination, previous legislation has not fully incorporated all of the elements of the uniform verification process. For example, under verification provisions of last year's Simpson-Mazzoli bill (H.R. 1510/S. 529), employers would have been required to verify eligibility only for all hires; uniform verification standards would not be required for all applicants, thus allowing employers to "screen out" applicants who appear "foreign." Second, penalties for violations of uniform recordkeeping provisions were substantially lower than those related to the knowing hire of undocumented aliens. Thus, the incentive to "play it safe" and avoid large fines would outweigh incentives to uniformly verify and record all documents. Finally, convictions and penalties for mere recordkeeping violations would be very unlikely if, as would often be the case with discriminating employers, no undocumented aliens were actually hired.

Theoretically, uniform verification might partially alleviate discrimination. No bill introduced to date, however, has included all of the key elements of a uniform verification system.

III. EVIDENCE OF EMPLOYMENT DISCRIMINATION RESULTING FROM EMPLOYER SANCTIONS

A growing body of evidence strongly suggests that, when faced by complicated hiring restrictions carrying heavy penalties, employers, especially small business-persons, are confused about their actual liability. Daniel Leach, former Vice-Chair of the Equal Employment Opportunity Commission (EEOC), has pointed this out in reference to employer sanctions:

> The smaller employer is perhaps where some of the problems in Title VII remain most severe: those that lack the sophistication, don't understand the law, choose not to deal with the law. That's a problem for EEOC as it is. I'm sure it would be a problem and continue to be a problem with any legislation that's proposed in [the employer sanctions] area. (The Tarnished Golden Door, p. 63)

Due to their confusion and uncertainty, many employers over-react, and take overly zealous measures to ensure compliance with immigration laws. For example:

- After Project Jobs, a country-wide sweep operation conducted by the INS in 1982, Time magazine reported that employers involved in the over 300 raids were reluctant to rehire even those workers who proved their legal status to INS officers.

- Although under proposed legislation sanctions would apply only to new hires, Ed Ryan, Vice President of Star Kist Foods, last year reported laying off workers suspected to be undocumented to avoid disruption; another manufacturer laid off over 30 "suspect" immigrant workers as a precautionary measure.

Colleen Logan, a high-level official in the California Department of Industrial Relations, attested before the U.S. Commission on Civil Rights (USCCR) to the discrimination related to this confusion. The USCCR reported that:

> As she put it, 'I can't say that they did [understand what to screen for], because I really didn't understand it totally.' She further testified that the response of some employers was to screen employees on the basis of 'the color of their skin or their speech accent.' (The Tarnished Golden Door, p. 64)

Specific examples of this type of discrimination were reported during House consideration of the Simpson-Mazzoli bill last year, as employers began to prepare for the enactment of sanctions legislation. The effects of these employer reactions ranged from differential treatment to denial of employment based on skin color or accent. Some examples:

- Bernard Brown, vice president of the Coalition of Apparel Industries, told the Los Angeles Times in mid-1984 that, to prepare for employer sanctions laws, the 600 employers he represented were instructed to ask applicants who were "'Latinos or look[ed] like Latinos'" for immigration documents.

- The director of a large manufacturing plant has confirmed that verification processes led directly to discrimination: "I hate to say this, but I'm sure there have been a lot of times that I've discriminated against Latinos. Sometimes you just don't have time to wait .... If I have four applicants for a job, I would naturally incline toward the one that's not Latino .... Most employers would rather play it safe ...." Because of these new screening processes, Hispanics dropped from 75 percent to 50 percent of the company's workforce. (The Los Angeles Times, 6/19/84)

- In Dallas, Texas, an apartment manager who apparently believed that the legislation would require evictions of undocumented aliens served notice to tenants that all who could not document legal immigrant or citizenship status would be reported to the INS.

Employers in these examples did not act with intent to discriminate. They responded to the threat of penalties by "playing it safe"; in the process, Hispanic job applicants were put at a serious disadvantage, and in many cases were denied employment.

Arguments that imposition of employer sanctions will increase employment discrimination have moved from a theoretical to a factual base. It is already known that some employers will react to sanctions in discriminatory ways. The only question is one of the scope of this discrimination.

IV. POTENTIAL SCOPE OF DISCRIMINATION

It is not argued here that employer sanctions would lead all employers to discriminate against all Hispanic applicants. Many employers probably will not discriminate; others would discriminate absent the pretext which sanctions provide. But, as shown above, some will undoubtedly discriminate due to sanctions. How many Hispanics will be "at risk" of sanctions-induced employment discrimination?

Simple, albeit rough, analysis of the Hispanic workforce in the United States provides some guidance in this respect. The total Hispanic workforce comprises just over six million persons. Assuming the current Hispanic unemployment rate of 10.7 percent, and assuming that roughly 25 percent of this proportion are looking for jobs on any given day, it can be estimated that over 150,000 Hispanic workers will come into contact with employer sanctions each day. According to the 1984 President's Report on Small Business, small firms hire 1.5 million full- and part-time workers daily -- roughly 750,000 in states with large Hispanic populations. Thus, as many as 150,000 Hispanic jobseekers potentially will be affected by employer sanctions each day, as they compete for 750,000 available small business jobs.

Senator Alan Simpson, a key proponent of sanctions, has argued that "90 percent of all employers" will comply with recordkeeping and verification requirements. Even if this were true, some 15,000 Hispanic workers would be competing for 75,000 jobs offered by small employers who are most likely to be confused by those sanctions provisions designed to reduce discrimination. Small businesspersons' demonstrated tendency to "play it safe" while hiring would thus place some 15,000 unemployed Hispanic applicants "at risk" every day.

V. CONCLUSION

The National Council of La Raza opposes employer sanctions, because such sanctions would have little effect on the flow of undocumented immigration while seriously jeopardizing many thousands of Hispanics and other "foreign-looking" job applicants. Convinced that <u>any</u> sanctions statute would inevitably lead to discrimination, the National Council strongly supports measures which provide redress for those whose civil rights are violated under new enforcement programs. In the past, Senators Gary Hart (D-CO) and Carl Levin (D-MI), and Representatives Augustus Hawkins (D-CA) and Barney Frank (D-MA) have offered amendments to sanctions legislation which sought to provide victims of sanctions-related discrimination an effective means of seeking redress. To the extent that sanctions legislation is enacted, La Raza believes that effective redress systems are an essential element of such legislation.

The National Council of La Raza continues to closely monitor incidents of job discrimination related to enforcement of immigration laws. For more information, or to report any such incidents, please contact Charles Kamasaki or Dan Purtell at (202) 628-9600.

ATTACHMENT C

Perspectivas Públicas

NATIONAL COUNCIL OF LA RAZA
Office of Research, Advocacy, and Legislation

ISSUE BRIEF

Date March 1984

Title EFFECTIVENESS OF LABOR LAW ENFORCEMENT IN DETERRING ILLEGAL IMMIGRATION

Contact Charles Kamasaki/ Martha Escutia (202) 628-9600

EFFECTIVENESS OF LABOR LAW ENFORCEMENT IN DETERRING ILLEGAL IMMIGRATION

I. INTRODUCTION

The immigration debate is heating up in light of imminent action to be taken by the House with regard to this issue. Proponents of the Simpson-Mazzoli bill (HR 1510) have attacked the enforcement provisions of the alternative legislation that has been introduced by Congressman Roybal. The Roybal bill (HR 4909) relies on a wide spectrum of labor law enforcement rather than employer sanctions as a means to curb illegal immigration. Since labor law enforcement has long been posited as an alternative to sanctions, arguments and responses should be clearly defined so that the debate is founded on substantive rather than rhetorical grounds.

II. ARGUMENTS

The Federation for American Immigration Reform (FAIR) and others have argued against the effectiveness of labor law enforcement in the following manner:

A. Immigration and Naturalization Service (INS) data show that about 70% of aliens apprehended report receiving the minimum wage or higher. Therefore, enforcement of labor laws will not reduce employers' incentives to hire the undocumented.

B. Labor law enforcement has been tried before and it doesn't work. A 1981 GAO study concluded that the Department of Labor's (DOL) 1977 program to deter the use of the undocumented by enforcing labor laws was ineffective, and that employer sanctions were needed to stop the hiring of unauthorized workers.

C. Labor law enforcement will, even if effective, fail to cover all firms. Unless all, or most, firms are covered, aliens will still find jobs and illegal immigration will continue. It has been argued that anything short of sanctions will not be effective in stemming the flow of the undocumented workers.

- Proponents of the Simpson-Mazzoli bill argue that removal of the Texas proviso and a clear, definitive ban on the hiring of undocumented workers is the only means of effectively reducing illegal immigration.

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III. RESPONSES

A. Whether undocumented workers receive minimum wages or higher:

1. The 70% figure is by no means definitive. First, previous studies have shown much lower wage rates for samples of the undocumented than the INS data (See, North-Houston Study, 1976). Second, it is widely known that INS is concentrating its enforcement efforts on those industries that have "jobs Americans want," i.e., those that tend to pay relatively high wages; thus, INS' data are skewed to reflect these higher wages. Finally, little is known about the reliability of the INS data. It is possible that apprehended aliens are attempting to protect their employers so that their jobs will be open if they return.

2. Enforcement of labor laws goes far beyond minimum wage enforcement. The Roybal bill covers all wage-and-hour violations including the failure to pay overtime, OSHA, and National Labor Relations Act. Violations of these laws save employers as much -- if not more -- than minimum wage violations. The 1979 DOL Noncompliance Survey found, for example, that violations of overtime provisions were more common than minimum wage violations (21.1% vs. 4.9% of the surveyed firms). Moreover, overtime violations resulted in underpayments of $11.2 million; violations of the minimum wage resulted in only $3.9 million in underpayments. The Roybal bill is more comprehensive in that it attacks a wide spectrum of labor law violations which save employers sizeable amounts of money. By enforcing labor laws and preventing violations, the Roybal alternative kills the employers' incentive to hire the undocumented rather than citizens or legal residents.

3. There is documentation that industries that hire large numbers of undocumented do so to avoid compliance with various labor laws. A study by the International Ladies' Garment Workers Union showed that garment manufacturers can save up to $5,000 per worker per year by violating labor laws. (See, Sol C. Chaikin and Phil Comstock, "Toward a Rational Immigration Policy," The Journal, The Institute for Socio-economic Studies, Spring 1982.)

B. Whether labor law enforcement is effective in deterring the use of undocumented workers:

1. The 1981 GAO study indicated that DOL's 1977 program was based on complaints by workers. Because of the fear of arrest and deportation, the undocumented tend not to complain about mistreatment. The Roybal bill provides for a self-directed program, and targets industries based on research into which sectors of the economy have high rates of employment of undocumented workers.

2. The 1977 DOL program referred establishments with suspected undocumented workers over to the INS. This not only deterred employees from reporting labor law violations but also reduced the incentives for workers to cooperate with the DOL program. The Roybal program would not have any INS involvement and should, therefore, have greater cooperation from workers.

3. The lack of penalties for record-keeping hampered enforcement and

evaluation of program effectiveness. The FLSA requires employers to keep records that enable DOL inspectors to verify compliance with wage and hour laws. Because there are no penalties for failure to keep records, and because employers could keep erroneous or incomplete records, detection of violations was made more difficult. Record-keeping is said to be especially important in detecting overtime violations, and the lack of record-keeping by employers was cited as one reason for limited program effectiveness. The Roybal bill establishes a new $10,000 penalty for failure to keep proper records, and will, therefore, be more effective in detecting violations.

4. The DOL program was understaffed, and backlogs of cases hindered program effectiveness. The old program included 225 compliance officers, and in many respects, operated as an extension of DOL's regular enforcement program. The Roybal bill, on the other hand, provides for 600 compliance officers operating in a separate unit.

C. Whether labor law enforcement alone, without sanctions, will halt the influx of illegal immigration:

It must be emphasized that the Roybal bill should not be compared to the ideal, rather abstract notion of sanctions, but to the sanctions program as written in the Simpson-Mazzoli bill and as they are likely to be enforced in the real world. When this comparison is made, sanctions look less effective, and the Roybal bill becomes even more credible. Specifically:

1. There are many exceptions in the Simpson-Mazzoli bill which decrease the coverage, and presumably the effectiveness, of employer sanctions:

   - Employers with three or fewer employees are exempted from the verification and recordkeeping requirements under the Senate bill;
   - Employers hiring workers on a day-to-day or casual basis are similarly exempted in the House bill;
   - Agricultural employers have the 3-year transition program under which they may continue to use undocumented workers in the House version; and
   - All employers are exempted from verification and recordkeeping in the House bill until their first violation (Kindness amendment).

   Given these exceptions, the sanctions program in Simpson-Mazzoli cannot be credibly described as broad, and is certainly less credible than sanctions in the abstract. The Roybal bill will target industries that are most likely to hire and exploit the undocumented. In terms of coverage, there appears to be little actual difference between the two bills.

2. Sanctions have simply never worked anywhere else. They have failed in:

   - Other countries. A 1982 GAO study of sanctions laws in 19 other

countries and Hong Kong concluded that they had been ineffective.

- States. Twelve states now have sanctions laws on the books, and none of them have been effective (thus the alleged need for a federal sanctions law).

- Agriculture. The Farm Labor Contractor Registration Act includes an employer sanctions provision. This has apparently not worked since agricultural interests got the transition program, an expanded H-2 program, and the Panetta amendments all because of their dependence on undocumented workers.

One state with a sanctions program (California) has abandoned it in favor of what it calls the Concentrated Enforcement Program (CEP) which targets labor law enforcement on firms using large numbers of undocumented workers.

3. Labor law enforcement is more cost-effective than sanctions. Sanctions are very costly in terms of the numbers of visits to employer worksites that will be made to verify compliance. With the same number of compliance officers (600), between 3.5 and 6 times as many employer worksites can be checked under the Roybal bill than under employer sanctions.

   - Per the HR 1510 Report (Judiciary), INS will be able to make 10,000 worksite visits and detain 16,000 individuals under the authorized funding level of HR 1510. This is to be accomplished with about 600 investigation officers. (See, Rpt. 98-115, p. 102). This translates into 16.7 worksite visits per investigative workyear and about 26.7 persons detained per workyear.

   - Under the envisioned Roybal alternative, it appears that enforcement of FLSA and OSHA will be much more cost-effective. For example, DOL estimated in 1982 that with 612 compliance officers it would make about 63,000 inspections. This translates into 102 inspections per workyear, or more than six times the efficiency of sanctions. For OSHA, in Fiscal Year 1983, with 1200 inspectors, 68,577 inspections took place. This translates into an efficiency of about 57 inspections per workyear, or about 3.5 times the efficiency of sanctions. (See, Rpt. 97-909, p.4). The apparent reason for the fewer visits per inspector under OSHA is that OSHA requires actual physical inspection of the workplace, whereas detection of FSLA violations can take place with inspections of records and worker interviews.

The reasons for the vast difference between sanctions and labor law enforcement are threefold:

- The physical and administrative machinery for labor law violation enforcement is already set up and operating. New machinery would have to be set up for sanctions.

- Similarly, significant economies of scale would be achieved by adding to existing enforcement, since each added increment of enforcement under existing laws would require only modest increases in administration. Under sanctions, the added

enforcement would entail substantial administrative and logistical expenses (aside from start-up costs).

- Finally, sanctions will apparently require inspection of the documents of suspect employees and the appropriate records. In addition, because sanctions are focused on violations with respect to individual employees, and since detention of undocumented individuals will have to take place, they are much more time consuming than wage and hour violation, where a compliance officer can issue a citation on the spot.

IV. CONCLUSION

To the extent that deterrence is based on fear of detection, we can expect that that the enforcement provisions of the Roybal bill will be more effective than employer sanctions as contemplated under the Simpson-Mazzoli bill. In addition, unlike employer sanctions, the Roybal bill will not create employment discrimination against "foreign-looking" persons, and will extend additional labor protections to many citizens and legal residents that are employed in the affected industries. Furthermore, labor law enforcement is less burdensome on business enterprises (whether large or small) because compliance will be determined by the records that are required to be kept under current law, whereas sanctions would require business concerns to collect new records such as workers' documentation.

ATTACHMENT D

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M E M O R A N D U M

TO : Interested Parties
FROM : Charles Kamasaki, Director of Policy Analysis
DATE : June 17, 1985
SUBJ : Preliminary Analysis of the "TRIGGERED" Legalization Concept (S.1200)

I. INTRODUCTION

Senate Immigration Subcommittee Chairman Alan Simpson (R-WY) recently introduced the Immigration Reform and Control Act of 1985 (S. 1200), which includes several major changes from previous immigration reform efforts. One of these changes involves a "triggered" legalization program. If enacted, S. 1200 would delay implementation of the legalization program until a Presidentially-appointed Commission certified that employer sanctions and other enforcement programs were in effect and had adequate resources to "substantially":

- Control illegal entry of aliens into the United States;
- Prevent and deter violations of the terms of entry (visa abuse); and
- Eliminate the employment of unauthorized aliens in the United States.

The Commission would also have to certify that "there is a substantial likelihood that these programs will continue to remain in effect after the implementation of legalization...."

Virtually all national Hispanic organizations support legalization, although many of these groups believe that the structure of the legalization programs included in previous reform efforts was inadequate. These concerns are not addressed here. This memo focuses on the efficacy of the trigger mechanism itself, i.e., the likelihood that the bill's enforcement provisions can meet the above-listed pre-conditions for legalization, and the ability of the Commission to certify the effectiveness of enforcement efforts.

II. ANALYSIS

A. Overview

There is substantial controversy over the efficacy of employer sanctions in eliminating the hiring of undocumented workers. Critics of employer sanctions

point to the experience of other countries, the 12 states in this country with employer sanctions laws, and the Farm Labor Contractor Registration Act (FLCRA) -- which prohibits farm labor contractors from knowingly hiring or recruiting undocumented persons -- as proof that such sanctions are not effective. Proponents of sanctions generally argue that:

- Most state laws are not analogous to the proposed federal legislation, and these laws have not been enforced. They suggest sanctions can be effective with vigorous enforcement.

- Some employer sanctions laws in other countries have been effective in reducing the hiring of undocumented persons. The most commonly cited example of an effective sanctions law is Hong Kong.

These responses are telling in that they concede several key points, i.e., that state sanctions laws have not been effective, that most of the sanctions laws in other countries have not been effective, and that the only existing federal sanctions law -- the FLCRA -- has not been effective. This does not necessarily preclude the possibility that a sanctions law can be designed that will, with proper enforcement, substantially reduce the employment of undocumented persons, but it has properly raised considerable skepticism of the efficacy of the sanctions concept.

This memo does not seek to review all the arguments over the efficacy of employer sanctions; rather, it will focus on the ability of the specific employer sanctions provisions in S. 1200 to meet the apparently very stringent conditions required to trigger legalization.

There is surprisingly little research on the effectiveness of employer sanctions from a theoretical perspective, despite the fact that it has been over a decade since Rep. Peter Rodino (D-NJ) first introduced sanctions legislation. Immigration attorneys Charles Smith and Juan Mendez have noted that:

> ...the literature on [employer sanctions] remains relatively small and unsophisticated in light of the extensively applied experience of social scientists, psychologists, and planners working on law enforcement. A review of the employer sanctions literature reveals no significant use of the extensive theoretical and case study work on deterrence done by criminal justice researchers. At the very least, proponents of employer sanctions should feel a scholarly obligation to examine the utility of deterrence knowledge as developed in the criminal justice area in relation to their deterrence claims for employer sanctions...(Smith and Mendez, North Carolina Journal of International Law and Commercial Regulation, 1982).

One sanctions proponent who has carried out considerable theoretical research on this issue is immigration scholar David North of the New Transcentury Foundation; however, North himself has written:

> ...despite widespread interest in illegal immigration and bursts of ethnographic studies regarding the migrants themselves, there has been virtually no work done by scholars on

alternative approaches to the enforcement of immigration and related laws (North and Wagner, "Enforcing The Immigration Law: A Review of the Options," New Transcentury Foundation, 1980).

Thus, instead of reviewing the minimal available literature on sanctions, this analysis will utilize recent research findings about the labor market effects of undocumented immigrants as a basis for predicting likely employer responses to employer sanctions.

B. Some Theoretical Considerations

Much of the discussion of the effectiveness issue has been extremely simplistic, treating "employers" as a homogeneous body that hires undocumented workers for the same reasons -- they are cheaper and more docile than native workers. Establishing economic and criminal penalties that appear to outweigh the economic advantages of hiring such workers, it is argued, will remove the incentive to hire such workers. This kind of rather simplistic analysis has led to "estimates" by [Senator Simpson and] Immigration and Naturalization Service (INS) Commissioner Alan Nelson that "90% of all employers will comply" with employer sanctions. Of course, if the ten percent of employers who do not comply hire all the undocumented workers in the country, then even a 90% compliance rate would not affect the level of employment of such workers at all.

Opponents of employer sanctions have been equally guilty of such over-simplification, arguing, for example, that sanctions will have no effect on illegal immigration since "push" factors such as war, political and religious persecution, and other factors are unaffected by sanctions. It is true that most scholars agree that the phenomenon of migration results from the complex interplay of both "push" and "pull" factors, but it is a bit incongruous to argue that the absence of employment opportunities would have no effect on the destination of migrants.

One useful method of predicting overall compliance rates is to examine the experience of analogous laws, such as labor laws. In 1979, the Minimum Wage Study Commission found that five percent of a random sample of 15,000 firms were in violation of the minimum wage provisions of the Fair Labor Standards Act (FLSA), and 21 percent were in violation of overtime provisions. The Commission estimated that five million workers were affected by these violations. The fact that many firms are apparently out of compliance with a well-known, accepted law that has been on the books since 1938 does not bode well for a new, more complicated, controversial law such as employer sanctions.

Of course, it would be helpful to review similar data for sanctions laws in other countries, but these data apparently do not, for the most part, exist (the often-cited General Accounting Office Study of employer sanctions relied on responses by enforcement personnel to questionnaires). Moreover, many of the foreign countries with sanctions provisions require national identification cards or work permits; they have varying enforcement schemes, making strict comparisons with the sanctions provisions in S. 1200 very difficult. Finally, the social, economic, and political environment in the United States is unique in many ways, i.e., proximity to "sending" countries, 2,000-mile border with Mexico, virtual open border with Canada, and a large, growing, dynamic and largely unregulated economy, all of which suggest that the U.S. experience with sanctions is likely to differ from that of other countries, at least in some respects. However, the very factors

that make the U.S. environment unique are likely to negatively influence an employer sanctions program. Enforcing a sanctions law on the tiny island of Hong Kong is a far different proposition than enforcing a similar law in this country.

Finally, it should be noted that one highly respected scholar has attempted to systematicaly examine various sanctions models. David North analyzed four different employer sanctions models and identified the varying degrees of cost, recordkeeping, discrimination, and effectiveness associated with each model. The model identified as "least effective" is essentially analogous to the provisions included in S. 1200, i.e., use of multiple existing documents to verify worker eligibility. Further, the verification process included in S. 1200 is a voluntary one, which would presumably reduce the effectiveness of the sanctions. The most effective model identified by North would require a new, national work permit, the establishment of which is precluded by S. 1200. (It should be noted, however, that S. 1200 permits the establishment of "more secure forms of verification" based on existing identifiers, such as the Social Security card.)

C. Employer Responses To Employer Sanctions

1. Types of Employers

Recent social science research has revealed that there are not one but several paths toward reliance on immigrant workers. This research shows that the industries that hire substantial numbers of such workers are extremely varied, and that the historical process leading to "immigrant domination" of an industry is very complicated. Wayne Cornelius of the Center for U.S.-Mexico Studies of the University of California at San Diego has identified several different types of immigrant-dominated firms:

- Some industries have always been immigrant-dominated. These include seasonal agriculture, agriculturally-related processing industries [e.g., canning and packing sheds], and some light industries [shoe producers, leather manufacturers].

- Lower-tier jobs in some service industries [restaurants, hotels] are increasingly immigrant-dominated, in part because of poor performance by non-immigrant sources of labor.

- Lower-tier manufacturers, who in the past relied on native disadvantaged workers [women, minorities] and legal resident aliens have increasingly relied on undocumented immigrants in part because of the easy availability of such workers [garment and textile manufacturers].

- Small, marginal firms in intensely competitive sectors such as construction, small foundries and factories, some services [landscaping, janitorial], and some manufacturing [electronics] rely on immigrant labor.

- "Ethnic enclave" firms owned by immigrants themselves or by second-generation natives [restaurants, commercial and retail] have always been immigrant-dominated.

While some of these firms utilize the competitive advantage afforded by lower-wage immigrant workers to maintain a declining industry (shoe and leather manufacturers, for example), many immigrant-dominated firms are in rapidly-expanding, high-growth sectors like electronics and services. This has critical implications for the effectiveness of sanctions since substantial non-compliance by firms in a growing industry could negate reductions in the employment of undocumented workers in smaller, declining industries.

With the exception of the hotel and restaurant sector, it appears that few undocumented immigrants are employed by large firms -- those with personnel departments and formal recruitment and hiring processes. This is especially important since rates of noncompliance with analogous laws like labor laws have historically been higher in small firms than in large ones.

Several other employer characteristics are relevant. It is safe to assume that employers' knowledge of the immigration status of their workers varies greatly depending on the type of industry, geographical location, and other factors. A garment manufacturer in Los Angeles, where it has been estimated that some 80 percent of the workforce is undocumented, presumably knows that many of his/her employees may be illegal immigrants. A construction contractor in Ohio, conversely, may have little reason to question the immigration status of any of his/her employees. This differential knowledge level is also likely to affect the rate of compliance with an employer sanctions law.

2. Enforcement Scheme

For the purposes of this analysis, it is presumed that two types of compliance programs would be pursued by INS. The first would involve targeted, periodic investigations of firms suspected of hiring large numbers of unauthorized workers. It is assumed that these "spot checks" would be targeted in manner similar to current "area control operations" (factory raids). It is unclear how many such investigations could be carried out since S. 1200 does not authorize any specific level of funding for enforcement; however, previous bills have included authorization for 600 new investigators capable of making an estimated 10,000 worksite visits annually (House Report 98-115, accompanying H.R. 1510). By way of comparison, the Department of Labor's Wage and Hour Division currently makes about 63,000 worksite inspections per year, which amounts to less than five percent of covered firms.

A second form of enforcement established in S. 1200 would be a complaint processing system. Individuals, unions, and other parties could file a complaint to the Attorney General alleging a violation of sanctions. The Attorney General would determine whether the complaints, "on their face, have a substantial probability of validity," and could investigate such complaints. It is not clear how many complaints could be expected, or what level of staffing would be required to process these complaints. The Wage and Hour Division currently allocates about 90 percent of its staff time to complaint processing; even so, backlogs are quite high -- up to a year for FLCRA violations in some regions.

In order to have an affirmative defense against charges of sanctions violations under S. 1200, an employer would have to verify that each "new hire" had at least two identification documents that appeared genuine, and keep a record of the act of verification. First-time violators would receive a warning; subsequent violations would lead to graduated civil and criminal penalties.

3. Employer Responses

It is assumed here that all employers would have sufficient knowledge of the sanctions provisions to permit a rational response to the threat of enforcement. Actually, of course, it is likely that many employers, especially small businesspersons, would be confused by the sanctions provisions and might react in irrational or over-zealous ways. The element of confusion is a key factor in arguments over the likelihood of sanctions-related employment discrimination, but need not be considered.

An over-simplification of deterrence theory suggests that employer responses to employer sanctions are likely to be based on the employer's calculation of two variables: the risk of noncompliance measured against the benefit of noncompliance. The risk of noncompliance has two components:

- The employer's perception of the likelihood of detection of a violation; and
- The employer's perception of the likely penalty for a detected violation.

The benefit of noncompliance is essentially the economic benefit derived from a violation (or violations) of the sanctions provision. If the benefits of noncompliance outweighed the risks of being caught, it is assumed that the employer would violate the statute; if the converse were true, the employer would comply. The best alternative would be for the employer to derive the benefit of noncompliance without incurring any significant degree of risk. It is argued below that most employers who currently rely on undocumented labor would be able to choose the last, most desirable alternative.

For the most part, employers of undocumented workers derive direct, significant economic benefit from these workers. They are paid lower wages, require fewer, if any, fringe benefits, are more reliable, and tend to stay in their positions longer than native workers. There probably are some "accidental" hires of undocumented workers, but most research suggests that the majority of employers who rely on such workers at least suspect that some of their employees are undocumented.

These employers could circumvent the sanctions provisions in numerous ways. The most obvious would be through document fraud. The employer could carry out the verification process and diligently maintain records while continuing to hire undocumented workers. There is widespread agreement that fraudulent documents are easily available in areas with large concentrations of undocumented persons. Many, if not most, undocumented workers already carry such fraudulent papers; the employer could merely "judge" these documents to be genuine when they were presented. One variation of this scheme could have the employer arranging for his/her employe to obtain reasonably good forgeries of key documents.

A second method of evading sanctions would be through subcontracting. Those firms -- especially large, respectable firms -- that feared bad publicity as much as fines could merely subcontract lower-tier jobs to small firms willing to assume the risk of hiring undocumented persons. There is substantial precendent for the use of subcontracting to avoid regulatory enforcement. One major food processing

firm in the Midwest routinely "subcontracts" out all farm labor, thus evading farmworker protection legislation. Professor Cornelius has documented widespread and increasing use of subcontracting by electronics firms in California seeking to avoid immigration raids and labor law enforcement.

There is a third alternative for firms that could not easily evade sanctions. Testimony in the California General Assembly after passage of that state's sanctions law revealed that many employers used the law as an opportunity to reduce wages, replace senior workers with younger ones, or require "taxes" or "bonds" of their undocumented employees, ostensibly to cover the risk of sanctions violations. In this way, the risks of noncompliance would be borne by the workers rather than the employer, while, of course, the employer received the benefits of noncompliance. Labor standards in these industries would be further degraded.

Recall the different types of firms dependent on immigrant labor. Each of these has both the incentive and the opportunity to use one or all of the above-listed methods to avoid compliance with sanctions while minimizing its risks. The industries that have traditionally been immigrant-dominated, such as agriculture, already successfully evade the FLCRA sanctions, primarily through subcontracting to farm labor contractors. The contractors, in turn, are careful only to hire those undocumented persons who have fraudulent documents.

Marginal firms which would go out of business without cheap labor would have the greatest incentive to violate sanctions, since they would have no alternative but to utilize the undocumented. Similarly, ethnic enclave firms who owe their existence to the undocumented -- as both a source of labor and as consumers -- would be unlikely to stop hiring persons merely because they didn't have documents; it would be far easier simply to ensure that those who were hired did have some documents. Finally, large, more "respectable" firms would be likely to increase the practice of subcontracting. Manufacturers and contractors already make heavy use of this practice; it is highly probable that service industries such as hotels and restaurants would begin to contract with "crew leaders" and other entities to supply laborers for menial positions.

Given the probable enforcement scheme described above, it is unlikely that sanctions, overall, would significantly decrease the employment of undocumented persons. Even allowing for some residual effect on employers who are currently unknowing violators who would be expected to comply, several factors mitigate against effective sanctions enforcement on a macro-economic basis. First, the relative ease of circumventing sanctions combined with substantial economic incentives for noncompliance suggest that most immigrant-dominated firms would continue to hire the undcoumented. Second, the effect of increased subcontracting would increase enforcement problems; instead of raiding a single large manufacturer in the Silicon Valley, the INS would have to seek out many smaller, highly-transient subcontractors. Violators would be more difficult to detect, and even successful prosecutions would affect fewer undocumented persons and would, therefore, be less cost-effective than might otherwise be expected. Third, the combined effect of subcontracting and the lowering of wage standards would probably have the effect of "driving out" legal aliens and native workers from some economic sectors, thus increasing rather than decreasing the demand for undocumented workers. Finally, the fact that undocumented workers are concentrated in many high-growth industries in some of the nation's most dynamic locations (California, Texas) suggests that even if the rate of hiring of such workers were reduced by sanctions, the absolute number of such workers might increase.

D. Commission Certification

1. Overview

This section examines the conditions that the Commission must certify before the implementation of a legalization program, and analyze the likelihood of such a certification. The three conditions required to trigger legalization relate to the "substantial" control of illegal entry, prevention and deterrence of visa abuse, and elimination of employment of unauthorized aliens. Two initial observations are relevant with respect to these pre-conditions. First, there is no mention in the legislation of the data that the Commission would use to make the required certifications. Second, none of the key operative terms, e.g., "substantially," "control," is defined. Thus, any in-depth analysis of the likelihood of the certification of the pre-conditions is, by definition, highly speculative.

Nevertheless, there appear to be several conceptual flaws inherent in the trigger concept, which deserve some exploration. For the purposes of this section, it is assumed that sanctions can be effective; the focus of this analysis is on the difficulty of measuring -- and therefore certifying -- this presumed effectiveness.

In the absence of specific definitions for the key operative terms embodied in S. 1200's trigger mechanism, one assumes that the literal meanings of these terms would be used by the Commission in its deliberations. Even this assumption poses new questions, however. For example, it is not clear whether the Commission's standards would require relative or absolute reductions in illegal entries, visa abuse, and illegal employment. If it is assumed that absolute reductions were required, the baseline measurement could be current levels of illegal entry, visa abuse or illegal employment, prevailing levels of such activity at the time of the Commission's deliberations, or projected levels of such activity in the absence of employer sanctions. If relative reductions were required, the problem of the baseline would still exist; in addition, the Commission could certify future enforcement as effective relative to current enforcement efforts, but absolute levels of illegal entry, visa abuse, and employment of undocumented could rise.

Irrespective of the standards used, the language of the bill demonstrates the difficulty of the Commission's task. First, all three conditions must be met before legalization could be triggered; even if all visa abuse and illegal employment were ended, if illegal entries were not "substantially controlled," legalization would not be triggered. Second, the requirement that employment of unauthorized aliens be "substantially" eliminated suggests an extremely stringent and perhaps impossible standard. Given that sanctions are supposed to apply only to "new hires," and that agricultural employers would be allowed under the transition program to continue to hire some undocumented workers, it is not clear how unauthorized employment could be "eliminated" in any meaningful sense for many years, if at all.

2. Data Availability and Reliability

One of the few areas of consensus on the immigration issue is that no one knows with any degree of certainty the key "facts" underlying the policy debate.

Estimates of the numbers of undocumented workers range from 2 to 35 million, and there is considerable disagreement over the labor market impact of these workers. Similarly, estimates of illegal entries tend to be based on multiples of actual apprehensions; some believe that for every one alien apprehended, three or four enter illegally. The difference between the "three" and the "four," in this case, amounts to over a million persons; presumably, the Commission would be interested in narrowing this difference somewhat. Thus, given extreme controversy over the reliability of key data, it is unclear how the Commission would select data sets necessary to measure the effectiveness of enforcement measures.

Even assuming the ability of the Commission to reach a consensus on a set or sets of reliable data to assess the effectiveness of enforcement efforts, serious questions remain about the ability of the Commission to satisfy the preconditions for legalization, since factors other than the effectiveness of such enforcement efforts can affect rates of illegal migration and employment. Among these factors are:

- Changes in the international economy, which may affect the "push" factors that stimulate migration.
- Changes in the domestic economies or internal political conditions of the major "sending" countries.
- Changes in economic conditions in this country. For example, illegal immigration to the U.S. has been slowed during recessions and economic slowdowns.

Thus, even if the Commission could identify reductions in rates of illegal entry, visa abuse, and illegal employment, it is not clear what portion of these reductions would be attributable to effective enforcement, domestic economic conditions, or other factors.

Finally, changes in INS deployment and enforcement strategy could greatly affect -- sometimes in unpredictable ways -- the data that the Commission would rely on. Even assuming that baseline measurements could be agreed upon, and that the effect attributable to non-enforcement factors could be assessed for some years, data for subsequent years could be skewed by events as innocuous as the discovery of "bugs" in automated visa control systems, or as momentous as another immigration emergency such as the Mariel boatlift. In 1980, in response to the boatlift, the INS shifted personnel from the U.S.-Mexico border to South Florida. This re-deployment was accompanied by a decrease in apprehensions. It is probably safe to say that the two events were related, but it is simply not possible to quantify the effect of the re-deployment on apprehensions.

The Commission could easily be faced with multiple -- and contradictory -- policy and strategy changes simultaneously. It is easy to envision a situation in which, as in "Project Jobs" in 1982, the INS would carry out high-visibility but low-productivity campaigns for political reasons, while concurrently, improvements in technology at the border and points of entry increased apprehensions. In this situation, apprehensions at the same points might increase dramatically, while apprehensions in the interior and other locations fell. How would the Commission determine whether illegal entries were being substantially controlled in that kind of situation?

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In sum, the inherent unreliability and imprecision of data bases, combined with the introduction of unquantifiable variables into already uncertain equations, would make the Commission certification process terribly difficult at best, and arbitrary at worst.

III. CONCLUSION

This memorandum demonstrates some of the conceptual problems with the triggered legalization program included in S. 1200. If employer sanctions proved to be ineffective, then legalization would not be triggered. If sanctions were effective, then it is far from certain that the Commission could so certify. There is yet another conceptual problem with the trigger concept: if sanctions were effective, then presumably there would be few persons left to be legalized; if sanctions were not effective, legalization would not be implemented.

This documents presents a preliminary analysis produced under extreme time constraints. A more formal and rigorous policy analysis will be prepared by the National Council of La Raza as more information about the trigger concept is made available. For research citations or more information on this issue, contact me or Immigration Analyst Dan Purtell at (202) 628-9600.